

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6714

BILL NUMBER: SB 353

NOTE PREPARED: Jan 26, 2006

BILL AMENDED: Jan 26, 2006

SUBJECT: Alternative Fuel Use and Production.

FIRST AUTHOR: Sen. Weatherwax

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) *IEDC*: The bill requires the Economic Development Corporation (IEDC) to work with: (1) automobile manufacturers to improve awareness and labeling; and (2) companies to include E85 stations in updates of global positioning navigation software.

E85 Sales Tax Deduction: The bill grants a deduction for the retail sale of E85 base fuel that may be applied against the seller's obligation to remit Sales Tax collections.

Biodiesel/Ethanol Tax Credits: The bill increases the maximum amount of credits that may be granted for biodiesel production, biodiesel blending, and ethanol production and indicates that the IEDC may grant a credit that is less than the maximum permissible statutory credit. It also extends the tax credit for the retail sale of blended biodiesel to 2010.

Other Provisions: The bill makes changes in certain definitions applicable to gasoline and special fuels tax laws. It grants tort and products liability immunity for the misuse of E85 motor fuel in a vehicle that is not equipped to use E85 motor fuel. It also makes related changes.

Effective Date: (Amended) January 1, 2005 (retroactive); January 1, 2006 (retroactive); July 1, 2006.

Explanation of State Expenditures: (Revised) The Department of State Revenue (DOR) would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the new sales tax deduction for sales taxes on E85 fuel sales. The bill requires the DOR to publish a notice in the Indiana Register when the deduction program is terminated because the aggregate credit limit

set by the bill is reached. The DOR's current level of resources should be sufficient to implement these administrative tasks.

Explanation of State Revenues: (Revised) *E85 Sales Tax Deduction:* The bill allows a retail merchant to deduct from Sales Tax the merchant remits on fuel sales an amount equal to \$0.10 per gallon of E85 sold by the merchant. The deduction would be effective for reporting periods from July 1, 2006, to July 1, 2008. The bill sets an aggregate credit limit of \$2 M.

The bill defines "E85" as a fuel blend nominally consisting of 85% ethanol and 15% gasoline that meets American Society for Testing and Materials standard specification 5798-99 for fuel ethanol for automotive spark-ignition engines.

(Revised) *Biodiesel/Ethanol Tax Credits:* The bill makes changes to existing tax credits for production of ethanol, biodiesel, and blended biodiesel, and for retail sales of blended biodiesel. The changes are as follows:

(1) The bill increases the aggregate credit limit from \$20 M to \$50 M for the ethanol production, biodiesel production, and blended biodiesel production credits. The new aggregate limit would apply to all credits provided after December 31, 2004. The amount of additional credits that may be claimed due to the new credit limit is indeterminable and depends on IEDC certification of companies for the production credits. The IEDC certified \$12 M in ethanol production credits in 2005 for four companies, with each company receiving \$3 M in credits. No more ethanol production credits may be certified under current statute. With the new credit limit, the IEDC could increase credits to the companies already certified by \$2 M each (a total of \$8 M in additional credits). The IEDC has not certified any credits for biodiesel or blended biodiesel production.

(2) The bill moves the sunset date for the blended biodiesel retail sales credit from December 31, 2006, to December 31, 2010. The credits that might be claimed due to extending the time frame of the credit is indeterminable and depends on IEDC certification of sales credits. In 2005, the IEDC did not certify any credits for the retail sale of blended biodiesel.

Background: Current statute provides credits against a taxpayer's Sales and Use Tax, AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for the production of biodiesel, blended biodiesel, and ethanol, and for the retail sale of blended biodiesel. The tax credits are: (1) \$1.00 for each gallon of biodiesel manufactured in Indiana and used to produce blended biodiesel; (2) \$0.02 per gallon of blended biodiesel produced in Indiana using biodiesel produced in Indiana; (3) \$0.125 per gallon of ethanol produced at an eligible facility in Indiana; and (4) \$0.01 per gallon of blended biodiesel sold by Indiana retailers.

Current statute limits the ethanol, biodiesel, and blended biodiesel production credits combined to \$20 M for all taxpayers and all taxable years. Within this overall limit, the credits certified by the IEDC must total at least \$4 M for each credit. Thus, no new credits for ethanol production can be approved under the current limits, as the IEDC certified \$12 M in ethanol production credits in 2005 (\$3 M each to four companies). In addition, the taxpayer limit for each credit is \$3 M, with provision for the IEDC to increase this limit to \$5 M for the ethanol production credit or the biodiesel production credit.

The Alternative Fuels Association (AFA) reports that one ethanol production facility currently operates in Indiana with a capacity of 102 million gallons per year. The AFA also reports that two facilities are currently under construction in Indiana, each with a 40 million gallon annual capacity. The National Biodiesel Board (NBB) reports that there are currently 45 active biodiesel production plants operating in the U.S. and 53

additional production plants proposed, including two in Indiana. The NBB reports that dedicated biodiesel plants in the U.S. have a total capacity of 60 to 80 million gallons per year, and that an additional 200 million gallons of capacity are available from non-dedicated facilities operated by oleochemical producers. The NBB also reports that a total of 59 biodiesel retailers and 41 biodiesel distributors currently operate in Indiana.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation.

Local Agencies Affected:

Information Sources: Gretchen White, Indiana Economic Development Corporation, (317) 234-3997.

Fiscal Analyst: Jim Landers, 317-232-9869.